

ORIGINAL
INTERVENTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

FEB 25 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
A DECLARATORY ORDER REGARDING BILL
ESTIMATION PROCEDURES

DOCKET NO. E-01345A-0775

MOTION TO INTERVENE

Avis Read, individually and on behalf of all others similarly situation, as captioned in Read v. Arizona Public Service Company, Maricopa County Superior Court Case No. CV2002-010760, ("Read"), respectfully submits this motion to the Arizona Corporation Commission ("ACC") to intervene in the above referenced Application to the ACC by Arizona Public Service Corporation ("APS"). Read moves to intervene as, pursuant to the mandate of Ariz. Admin. Code R14-3-105, she and the Class are directly and substantially affected by the proceedings instituted upon the request of APS.

I. FACTUAL AND LEGAL BASIS FOR INTERVENTION

On June 4, 2002, a class action lawsuit ("Litigation") was filed on behalf of APS customers seeking relief from illegal APS billing and metering practices. While supported by several legal theories, the basis of the Litigation is that APS has been knowingly and systematically secretly billing APS customers for electricity that its customers have not used and that such bills were rendered and collected based on procedures and methodologies that are unlawful¹, unapproved and violate APS's obligations, as a regulated public service company, to the citizens of Arizona.

On October 22, 2003, APS filed an Application before the ACC. The Application, on its face, is directed as a flank attack upon the Litigation by APS. APS filed the Application seeking an order

¹Read's complaint is based on violations of Arizona statutes, Arizona Regulations and common law theories.

1 that it argued would be necessary "in view of pending litigation in Superior Court . . ." (See, APS
2 Application at page 1). Later in the Application, APS explains that the litigation that it had alluded to
3 earlier in its Application is, in fact, the Litigation brought before the Superior Court of Maricopa
4 County by Plaintiff Avis Read. Because APS's Application to the ACC on October 22, 2003 was in
5 direct response to litigation brought by Read, intervention by Read is not only appropriate, but
6 necessary. This is especially true because, apart from APS's acknowledgment that its Application was
7 a direct result of the Litigation, any adjudication or resolution of the matters brought before the ACC
8 by APS through APS's Application may have a collateral effect on issues raised in the Litigation over
9 which the Superior Court has concurrent jurisdiction. Accordingly, intervention is necessary and proper
10 on both legal and factual grounds and will provide a full response to APS's Application if this Motion
11 for Leave to Intervene is granted..

12 Apart from these factors, as a practical matter, Read strongly believes that her intervention, on
13 behalf of herself and the Class, in this matter would benefit both the ACC and the citizens of the State
14 of Arizona. Through discovery in the Litigation, Read has been able to gain valuable information
15 regarding APS's business practices. Much of this information reveals a pattern of disregard for ACC
16 authority and runs afoul of the position that APS articulates in its Application.

17 These facts, discovered throughout the course of the Litigation, merit investigation by the ACC.

18
19 RESPECTFULLY SUBMITTED this 25th day of February, 2004.

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1 **SERVICE LIST FOR:**

IN THE MATTER OF THE APPLICATION OF ARIZONA
PUBLIC SERVICE COMPANY FOR A DECLARATORY
ORDER REGARDING BILL ESTIMATION PROCEDURES

3 **DOCKET NO.:**

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6 Arizona Corporation Commission
7 Docket Control
1200 Washington Street
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9 ONE (1) COPY OF THE FOREGOING
Served via U.S. Mail this 25th day of February 2004, to:

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